Australian Carbon Tax Update

Squire Sanders Briefing Paper

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Introduction

The historic Clean Energy legislation package passed through the Australian House of Representatives on 12 October 2011. It is expected to be approved by the Senate and pass into law by December 2011. The package contains 19 bills, which the Federal Government hopes will secure a 'clean energy future' and give effect to a carbon price mechanism policy announced earlier this year.

The four key elements of the package include the:

- Clean Energy Bill (to set up the carbon price mechanism);
- Clean Energy Regulator Bill (to establish the regulatory body to administer the carbon price mechanism); and
- Climate Change Authority Bill (to establish a new authority to advise on the future design of the carbon price mechanism).

The package also includes Bills making consequential amendments to fuel tax, excise duties and customs legislation.

The initial estimated cost of the plan is $6-7 billion (AUD) pa with a 0.7% CPI increase in 2012/2013 and a reduction in GPD of 0.1%.

Brief overview of the system

- Approximately 500 Australian companies will be required to acquire and surrender carbon permits.

- There is a two stage carbon policy mechanism – commencing with a fixed price carbon period from 1 July 2012 and transitioning to an emissions trading scheme (ETS) on 1 July 2015.

- One carbon permit will allow the discharge of 1 tonne of CO2-e in a compliance year.

- The initial fixed price for a carbon permit will be $23.

- The price of carbon permits will increase to $24.15 in 2013–14 and $25.40 in 2014-15 (reflecting a 2.5% increase in real terms).

- The market will determine the price of carbon from 1 July 2015.

- A cap will be set by the Government during the flexible price period as to the amount of greenhouse gases that may be emitted during each compliance year. Australia's green house gas reduction targets and international climate change obligations will be considered when setting the cap.

- The annual caps of the first, five years of the ETS flexible price period will be announced by 31 May 2014.

- A price floor and price ceiling will be set for at least the first three years of ETS to avoid uncertainty in the market for investors and liable companies. The price floor will be initially set at $15 and will rise by 4% in real terms each year.

- The price ceiling will be set at $20 above the expected international price for 2015-16. It will rise 5% in real terms each year.

- Various emissions will not be covered, including: agricultural and land sector emissions; emissions from fuel used by households for transport and by light on-road commercial vehicles, emissions from legacy waste (deposited before 1 July 2012), emissions from the combustion of bio fuels and biomass; and emissions from international aviation. There are options for some of these industries to 'opt in' to the system.

Affected parties

Businesses that emit greenhouse gases from:

- stationary energy (eg power stations);
- industrial processes (eg manufacturing);
- non-legacy waste (eg landfill or waste treatment);
- fugitive emissions (eg emissions from active coal mines and oil and gas projects);
- a facility over which the business has 'operational control' and emits 25,000 t CO2-e or more in a compliance year,

  ... will be required to acquire and/or surrender carbon permits.

Of the 500 liable businesses, it is estimated that around:

- 60 are primarily involved in electricity generation;
- 100 are primarily involved in coal or other mining;
- 40 are natural gas retailers;
- 60 are primarily involved in industrial processes (cement, chemicals and metal processing);
- 50 operate in a range of other fossil fuel intensive sectors; and
- the remaining 190 operate in the waste disposal sector.

Natural gas retailers will be liable for the greenhouse gas emissions from the use of the fuels that are supplied to customers.

Transferring liability

There will be opportunities to transfer emission liability from one corporate facility to another member of the corporate group or a person outside that group who holds financial control of the facility.

Companies that are members of unincorporated joint venture will be able to apply to transfer emissions liability to joint venture participants in proportion to their interest in the facility.

Natural gas emission liability can be transferred from retailers to customers purchasing large quantities of natural gas.

The lead up to July 2012

While there is still an element of uncertainty surrounding particular regulations and implementation processes, it is prudent for businesses to begin anticipating and preparing for the proposed carbon tax. In particular, it should be considered whether:

- greenhouse gas information is being collected and analysed within your organisation;
- there will be any requirements for your business to acquire and surrender carbon permits;
- there are opportunities to minimise potential exposure or to allocate liability within your corporate group or between joint venture participants;
- there are opportunities to acquire or create carbon offsets;
- any industry assistance or Government funding will be available;
- contracts engaged in allow the passing through of any cost increases as a result of the Carbon Price Mechanism (and how you can write this into future contracts);
- suppliers will be entitled to pass through any cost increases to you; and
- any disclosures to the market under the ASX Listing Rules and the Corporations Act 2001 (Cth) are required.

Squire Sanders provides a range of services to provide you with all the information and means necessary to make your business carbon tax ready.

How Squire Sanders can help?

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